

8-15-2016

State v. Fisher Appellant's Brief Dckt. 43964

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Fisher Appellant's Brief Dckt. 43964" (2016). *Not Reported*. 3141.
https://digitalcommons.law.uidaho.edu/not_reported/3141

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIdaho Law. For more information, please contact annablaine@uidaho.edu.

ERIC D. FREDERICKSEN
Interim State Appellate Public Defender
I.S.B. #6555

REED P. ANDERSON
Deputy State Appellate Public Defender
I.S.B. #9307
P.O. Box 2816
Boise, ID 83701
(208) 334-2712

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 43964
Plaintiff-Respondent,)	
)	ADA COUNTY NO. CR 2010-13452
v.)	
)	
MASSON CORY FISHER,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
_____)	

STATEMENT OF THE CASE

Nature of the Case

Masson Cory Fisher appeals from the district court's denial of his Idaho Criminal Rule 35 motion for reduction of sentence. He asserts that the district court abused its discretion when it denied the motion.

Statement of the Facts & Course of Proceedings

In November of 2010, Mr. Fisher pleaded guilty to one felony count of driving under the influence of alcohol and one misdemeanor charge. (R., p.58.) The district court imposed a sentence of ten years, with four years fixed, but retained jurisdiction so that Mr. Fisher could participate in a Rider program. (R., pp.59-60.) After Mr. Fisher

successfully completed the program, the district court entered an order suspending his sentence and placing him on probation for ten years. (R., pp.65-66.)

In January of 2014, the State filed a motion for a bench warrant and alleged that Mr. Fisher had committed multiple probation violations. (R., pp.72-74.) The district court granted the motion, and Mr. Fisher was arrested shortly thereafter. (R., pp.88-90.) Pursuant to a plea agreement, Mr. Fisher agreed to plead guilty to five probation violations, and the State agreed to dismiss the other allegations. (R., p.101.) After a disposition hearing, the district court revoked Mr. Fisher's probation and executed his underlying sentence. (R., pp.104-105.) Subsequently, Mr. Fisher filed an Idaho Criminal Rule 35 motion for reduction of sentence and for leave to supplement the motion with additional information. (R., p.108.)

The district court granted Mr. Fisher's motion to provide supplemental information. (R., p.110.) In October of 2014, the district court denied Mr. Fisher's Rule 35 motion. (R., pp.114-116.) Thereafter, Mr. Fisher filed a Notice of Appeal, which was not timely from the district court's order denying the motion. (R., pp.118-119.) Pursuant to post-conviction relief, the district court issued an amended order denying the motion in February of 2016. (R., pp.124-126.) It noted that it had taken judicial notice of an addendum to a Rule 35 motion Mr. Fisher had filed in CR 2005-1761 (*hereinafter*, Addendum (augmented to the record contemporaneously)), and said it had "considered the additional information in this denial; although, Defendant did not file any supplemental information in support of his rule 35 motion" in this case. (R., p.126, n.2.)

On appeal, Mr. Fisher asserts that the district court abused its discretion when it denied the motion because there was new information in the addendum that was not adequately considered.

ISSUE

Did the district court abuse its discretion when it denied Mr. Fisher's Idaho Criminal Rule 35 Motion for a Reduction of Sentence?

ARGUMENT

The District Court Abused Its Discretion When It Denied Mr. Fisher's Idaho Criminal Rule 35 Motion For A Reduction Of Sentence

A motion to alter an otherwise lawful sentence under Rule 35 is addressed to the sound discretion of the sentencing court, and essentially is a plea for leniency which may be granted if the sentence originally imposed was unduly severe. *State v. Trent*, 125 Idaho 251, 253 (Ct. App. 1994). "The criteria for examining rulings denying the requested leniency are the same as those applied in determining whether the original sentence was reasonable." *Id.* "If the sentence was not excessive when pronounced, the defendant must later show that it is excessive in view of new or additional information presented with the motion for reduction." *Id.*

In the addendum that the district court considered, Mr. Fisher explained that I.D.O.C. had transferred him to the prison in Orofino because his mother had been a deputy warden at the Idaho State Correctional Institution and now worked as that prison's "clinical supervisor." (Addendum, p.3.) He said that his family could not visit him in northern Idaho, and he missed them a great deal. (Addendum, p.3.) Mr. Fisher said that he had attended all the church services available to him, and he had "grown

spiritually by excepting (sic) Jesus Christ into” his life. (Addendum, p.3.) He also said that he had been attending Alcoholics Anonymous meetings and had been “honestly focusing on the 12 steps.” (Addendum, p.3.) Additionally, he said he had been reading books on how to change his thinking patterns. (Addendum, p.3.) He explained that he had applied for a “green card,” which would allow him to work off the institution grounds, and he would be applying for a job soon. (Addendum, p.4.) He noted that he had no “DORs” or other disciplinary issues, and said he was completely focused on his “success and recovery.” (Addendum, p.4.) Finally, he asked the district court to reduce his sentence so he could be with his family and support them, and he submitted his parole plan to the court. (Addendum, pp.4-6.)

Mr. Fisher asserts that the district court abused its discretion when it denied his Rule 35 motion because it did not adequately consider the information in his addendum.

CONCLUSION

Mr. Fisher respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that the order denying his Rule 35 motion be vacated and the case remanded to the district court for further proceedings.

DATED this 15th day of August, 2016.

_____/s/_____
REED P. ANDERSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 15th day of August, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing a copy thereof to be placed in the U.S. Mail, addressed to:

MASSON CORY FISHER
INMATE #81962
NCWC
1640 11TH AVENUE NORTH
NAMPA ID 83687

MELISSA MOODY
DISTRICT COURT JUDGE
E-MAILED BRIEF

NICOLE OWENS
ADA COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

RPA/eas